

MEMORANDUM OF UNDERSTANDING

THE NATIONAL CENTER FOR EDUCATION STATISTICS
U.S. DEPARTMENT OF EDUCATION
and
THE _____

SUBJECT: Access by the _____ to Individually Identifiable Information acquired by the National Center for Education Statistics, protected under the National Education Statistics Act of 1994, as amended, and the Privacy Act of 1974.

The National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement (OERI) of the United States Department of Education has collected individually identifiable information, the confidentiality of which is protected by the Privacy Act of 1974, 5 U.S.C. 552a, and sections 408 and 411 of the National Education Statistics Act of 1994, 20 U.S.C. 9001 et seq., as amended, and wishes to make the data available for statistical research and analysis purposes, but only if the data are used and protected in accordance with the terms and conditions stated in this Memorandum of Understanding.

The _____ and the National Center for Education Statistics are agreed that:

I. INFORMATION SUBJECT TO THIS UNDERSTANDING

- A. All data containing individually identifiable information collected by or on the behalf of NCES under sections 408 and 411 of the National Education Statistics Act of 1994, as amended, that are provided to the _____ and all information derived from those data, and all data resulting from merges, matches, or other uses of the data provided by NCES with other data are subject to this agreement and are referred to in this Memorandum of Understanding as "subject data."
- B. Subject data under this Memorandum of Understanding may be in the form of computer tapes, diskettes, CD-ROMs, hard copy, etc., the _____ may only use the subject data in a manner and to a purpose consistent with:
 - (1) the statistical purpose for which the data were supplied, _____ description of the planned research and analysis is attached and made a part of this Memorandum of Understanding - Attachment No. 1),

- (2) the limitations imposed under the provisions of this Memorandum of Understanding, and
- (3) the National Education Statistics Act of 1994, as amended, and the Privacy Act of 1974, 5 U.S.C. 552a, which are attached to and made a part of this Memorandum of Understanding (Attachment No. 2.)

II. INDIVIDUALS WHO MAY HAVE ACCESS TO SUBJECT DATA

- A. There are three categories of individuals that the _____ may authorize to have access to subject data. The three categories of individuals are as follows:
 - 1. The Principal Project Officer (PPO) is the most senior statistical officer in charge of the day-to-day operations involving the use of subject data and is responsible for liaison with NCES.
 - 2. Professional/Technical Staff (P/TS) who conduct the research for which this Memorandum of Understanding is issued.
 - 3. Support staff which includes secretaries, typists, computer technicians, messengers, etc. The _____ may disclose subject data to support staff who come in contact with the subject data in the course of their duties only to the extent necessary to support the research under this Memorandum of Understanding.
- B. The _____ may disclose subject data to only seven (7) P/TS unless NCES provides written authorization for a larger number of P/TS.

III. LIMITATIONS ON DISCLOSURE

- A. The _____ shall not use or disclose subject data for any administrative purposes nor may they be applied in any manner to change the status, condition, or public perception of any individual regarding whom subject data is maintained.
- B. The _____ shall not disclose subject data or other information containing, or derived from, subject data at fine levels of geography, such as school district, institution, or school, to anyone other than NCES employees working in the course of their employment or individuals for whom access is authorized under this Memorandum of Understanding. The _____ may make disclosures of subject data to individuals other than those specified in this paragraph only if those individuals have executed an Affidavit of Nondisclosure

and the _____, has obtained advance written approval from NCES.

- C. The _____ shall not make any publication or other release of subject data listing information regarding individuals even if the individual identifiers have been removed.
- D. The _____ may publish the results, analysis, or other information developed as a result of any research based on subject data made available under this Memorandum of Understanding only in summary or statistical form so that the identify of individuals contained in the subject data is not revealed.

IV. ADMINISTRATIVE REQUIREMENTS

- A. The research conducted under this Memorandum of Understanding and the disclosure of subject data needed for that research must be consistent with the statistical purpose for which the data were supplied.
- B. Execution of Affidavits of Nondisclosure.
 - 1. The _____ shall provide a copy of this Memorandum of Understanding, together with the attached SECURITY PROCEDURES (Attachment No. 3) to each employee of the _____ who will have access to subject data and shall require each of those employees to execute an Affidavit of Nondisclosure.
 - 2. The _____ must ensure that each individual who executes an Affidavit of Nondisclosure reads and understands the materials provided to her or him before executing the Affidavit.
 - 3. The _____ shall ensure that each Affidavit of Nondisclosure is notarized upon execution.
 - 4. The _____ may not permit any individual specified in paragraph II.A. to have access to subject data until the procedures in paragraphs IV.B.1. through 3. of this Memorandum of Understanding are fulfilled for that individual.
 - 5. The _____ shall promptly, after the execution of each affidavit, send the original affidavit to NCES for inclusion in the System of Records as published in the Federal Register.

C. Notification regarding authorized individuals to NCES.

1. The _____ shall promptly notify NCES when an employee who has been authorized to have access to subject data is no longer authorized access to those data.

D. Publications made available to NCES.

1. The _____ shall provide NCES a copy of each publication containing information based on subject data or other data product based on subject data made available to individuals who have not executed an Affidavit of Nondisclosure.
2. When publication or other release of research results could raise reasonable questions regarding disclosure of individually identifiable information contained in subject data, copies of the proposed publication or release must be provided to NCES before that disclosure is made so that NCES may advise whether the disclosure is authorized under this Memorandum of Understanding and the provisions of sections 408 and 411 of the National Education Statistics Act of 1994, as amended, and the Privacy Act of 1974, 5 U.S.C. 552a. The _____, agrees not to publish or otherwise release research results provided to NCES if NCES advises that such disclosure is not authorized.

E. The _____ shall notify NCES immediately upon receipt of any legal, investigatory, or other demand for disclosure of subject data.

F. The _____ shall notify NCES immediately upon discovering any breach or suspected breach of security or any disclosure of subject data to unauthorized parties or agencies.

G. The _____ agrees that representatives of NCES have the right to make unannounced and unscheduled inspections of the facilities of the _____ including any associated computer center, to evaluate compliance with the terms of this license and the requirements of sections 408 and 411 of the National Education Statistics Act of 1994, as amended, and the Privacy Act of 1974, 5 U.S.C. 552a.

V. SECURITY REQUIREMENTS

A. Maintenance of, and access to, subject data.

1. The _____ shall retain the original version of the subject data at a single location and may make no copy or extract of

the subject data available to anyone except a P/TS as necessary for the purpose of the statistical research for which the subject data were made available to the _____.

2. The _____ shall maintain subject data (whether maintained at a mainframe facility, remote terminals, personal computers, or on printed or other material) in a space which is limited to access by authorized personnel.
3. The _____ shall ensure that access to subject data maintained in computer memory is controlled by password protection. For subject data maintained on a mainframe computer, password protection is required at the file level. The _____ shall maintain all printouts, diskettes, personal computers with subject data on hard disks, or other physical products containing individually identifiable information derived from subject data in locked cabinets, file drawers, or other secure locations when not in use.
4. The _____ shall ensure that all printouts, tabulations, and reports are edited for any possible disclosures of subject data.
5. The _____ shall establish procedures to ensure that subject data cannot be extracted from a computer mainframe, remote terminals or separate PCS by unauthorized individuals.
6. The _____ shall not permit removal of any subject data from the limited access space protected under the provisions of this Memorandum of Understanding as required in the attached SECURITY PROCEDURES, without first notifying, and obtaining written approval from, NCES.

B. Retention of subject data.

The _____ shall return to NCES all subject data, or destroy those data under NCES supervision or by approved NCES procedures, when the statistical research that is the subject of this Memorandum of Understanding has been completed or this Memorandum of Understanding terminates, whichever occurs first.

C. Compliance with established security procedures.

The _____ shall comply with the SECURITY PROCEDURES attached to this Memorandum of Understanding.

VI. PENALTIES

- A. Any violation of the terms and conditions of this Memorandum of Understanding may subject the _____ to immediate abrogation by NCES, and the return of all subject data materials.
1. The NCES official responsible for liaison with the _____ shall initiate abrogation of this Memorandum of Understanding by written notice to the _____ indicating the factual basis and grounds for abrogation.
 2. Upon receipt of the notice specified in paragraph VI.A.1. of this Memorandum of Understanding, the _____ has thirty (30) days to submit written argument and evidence to the Commissioner of NCES indicating why the Memorandum of Understanding should not be abrogated.
 3. The Commissioner shall decide whether to abrogate the Memorandum of Understanding based solely on the information contained in the notice to the _____ and the rebuttal provided by the _____. The Commissioner shall provide written notice of the decision to the _____ within forty-five (45) days after receipt of the response of the _____. The Commissioner may extend this time period for good cause.
- B. Any violation of this Memorandum of Understanding may also be a violation of Federal criminal law under the Privacy Act of 1974, 5 U.S.C. 552a, and/or sections 408 and 411 of the National Education Statistics Act of 1994, 20 U.S.C. 9001 et seq., as amended. Alleged violations under the National Education Statistics Act of 1994 are subject to prosecution by the United States Attorney. The penalty for violation of sections 408 and 411 of the National Education Statistics Act of 1994, as amended, is a fine of not more than \$250,000 and imprisonment for a period of not more than five (5) years.

VII. PROCESSING OF THIS MEMORANDUM OF UNDERSTANDING

- A. This Memorandum of Understanding shall be for a period of five (5) years. If before the expiration of this MOU, the Commissioner establishes regulatory standards for the issuance and content of Memorandum of Understanding, the recipient agrees to comply with the regulatory standards.
- B. This Memorandum of Understanding may be amended, extended or terminated by mutual written agreement between the _____ and the Commissioner, NCES. Any amendment must be signed by the _____

_____ and by the Commissioner and is effective on the date that all required parties have signed the Memorandum of Understanding.

C. The _____, _____ shall sign this license below. The _____, _____ certifies, by his/her signature, that -

1. The organization has the authority to undertake the commitments in this license;
2. The _____, _____, has the authority to bind the organization to the provisions of this Memorandum of Understanding; and
3. The Principal Project Officer (PPO) designated by the _____, _____, is a senior statistical officer for the _____, who has the authority to manage the day-to-day statistical operations of the Licensee.

Signature of the _____, _____

Date _____ Telephone: (____)_____

D. The individual described in paragraph II.1., and VII, C, 3, as the PPO shall sign this license below.

Signature of the Principal Project Officer Date

Title: _____ Telephone: (____)_____

E. The Commissioner of the National Center for Education Statistics concurs in this Memorandum of Understanding and authorizes the access of the _____ to the subject data. This is effective as of the date of the Commissioner's signature below.

Commissioner, Date
National Center for Education Statistics

MOU Control Number: _____
(Assigned by NCES)